

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LAWRENCE SIMMONS,)	CV F 99 6338 OWW SMS HC
)	
Petitioner,)	ORDER REGARDING PETITIONER'S
)	MOTION TO AMEND JUDGMENT FOR
v.)	CLERICAL MISTAKE
)	
MIKE KNOWLES, et al.,)	[Doc. #102]
)	
Respondents.)	

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On March 16, 2005, the Magistrate Judge issued a Findings and Recommendation that recommended the petition be denied. On April 11, 2005, Petitioner filed objections.

On May 5, 2005, this Court adopted the Findings and Recommendation in full and denied the petition with prejudice, and the Clerk of Court entered judgment thereon.

On May 16, 2005, Petitioner filed the instant motion to amend the judgment for clerical mistake pursuant to Rules 59(e) and 60(a) of the Federal Rules of Civil Procedure. Rule 59(e) provides:

Motion to Alter or Amend Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

1 Rule 60(a) provides:

2 **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and
3 errors therein arising from oversight or omission may be corrected by the court at any time of
4 its own initiative or on the motion of any party and after such notice, if any, as the court
5 orders. During the pendency of an appeal, such mistakes may be so corrected before the
6 appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so
7 corrected with leave of the appellate court.

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9 Petitioner claims this Court stated it was adopting the Findings and Recommendation of the
10 Magistrate Judge in full, yet the final order did not match the Findings and Recommendation. In
11 particular, Petitioner states this Court dismissed the petition with prejudice, but the Magistrate Judge
12 had recommended the petition be denied. The Court has reviewed the docket and finds Petitioner's
13 contention to be without merit. The Magistrate Judge recommended the petition be "denied," and
14 this Court ordered the petition "denied with prejudice." To the extent that Petitioner takes issue with
15 the additional words "with prejudice," the argument is groundless. When a petition is denied on the
16 merits, it is for all purposes a denial "with prejudice." This Court's order merely clarified that fact.

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18 Accordingly, Petitioner's motion to amend the judgment is DENIED.

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20 IT IS SO ORDERED.

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22 **Dated: June 14, 2005**
23 emm0d6

24 **/s/ Oliver W. Wanger**
25 UNITED STATES DISTRICT JUDGE